

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF TEXAS  
3 HOUSTON DIVISION

4 ERNEST J. HARRIS, ET AL \* 08-CV-1243  
5 VS. \* Houston, Texas  
6 FIDELITY NATIONAL \* July 17, 2008  
7 INFORMATION SERVICES, \* 3:50 p.m.  
8 INC., doing business as \*  
9 Fidelity National \*  
10 Foreclosure & Bankruptcy \*  
11 Solutions \*

12 CONFERENCE

13 BEFORE THE HONORABLE LYNN N. HUGHES  
14 UNITED STATES DISTRICT JUDGE

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22 produced by computer-assisted transcription.

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1 THE COURT: I don't reckon anybody wants to  
2 announce a settlement?

3 MR. YETTER: No, Your Honor, not at this point,  
4 actually.

03:50:26PM 5 THE COURT: Pull that microphone down.

6 MR. YETTER: That is something that the parties  
7 have been exploring, but we don't have anything to  
8 announce, Your Honor.

9 THE COURT: Well, are we making some progress?  
03:50:38PM 10 I mean, I just as soon not work.

11 MR. YETTER: And we appreciate that, Your  
12 Honor. We are making some progress. At the last hearing  
13 what the Court said is -- the Court ordered some exchange  
14 of information and our initial concern was that the policy  
03:50:54PM 15 and procedure manuals we got from Fidelity weren't what we  
16 were expecting, were not consistent --

17 THE COURT: I'm sorry about that.

18 MR. YETTER: But what we got yesterday, Your  
19 Honor, we got notice yesterday that they have another CD,  
03:51:07PM 20 they gave us a list of the documents. It looks fairly  
21 significant, it looks closer, in fact, it looks much more  
22 like what we were expecting, and we have made an agreement  
23 between the two sides to visit on the --

24 [!EZ SPEAKER 04]: On the 30th.

03:51:26PM 25 MR. YETTER: -- on the 30th of July.

1 MR. CASH: No.

2 MR. YETTER: Maybe I understood what the  
3 agreement is. But, basically, I think we're going to sit  
4 down on the 30th.

03:51:35PM 5 MR. CASH: We're going to see if we can nail  
6 down a protective order first, confidentiality, and a  
7 number of issues we'll have to deal with.

8 THE COURT: Why do we have to deal with that?

9 MR. CASH: Well, Your Honor, ours is a highly  
03:51:49PM 10 competitive business, and these are internal, highly  
11 confidential proprietary documents that we have given them  
12 a list.

13 THE COURT: The reason I'm late getting to  
14 you-all, I had to beat on a bunch of patent lawyers to get  
03:52:01PM 15 all that out of a fairly decent patent case.

16 MR. CASH: We just had two new competitors  
17 enter the market within the last 30 days, Your Honor. And  
18 so it's --

19 THE COURT: Do a long order. I'll do my long  
03:52:12PM 20 order right now.

21 MR. CASH: Okay.

22 THE COURT: But, basically, the discovery in  
23 this case will be used in the legitimate good faith  
24 prosecution of defense of this case or I will kill whoever  
03:52:24PM 25 doesn't. This is not about press releases and other stuff

1 or embarrassing them to the advantage of their competitors.

2 MR. YETTER: We understand.

3 MR. CASH: There was a stronger sanction we  
4 would have asked for, Your Honor, but --

03:52:43PM

5 THE COURT: I've been dealing with it so long I  
6 can probably do it just for the fun of it.

7 MR. YETTER: So the Court's question was  
8 already made prior to the answer is, we are making some  
9 progress, and we think on the 30th we may make some more

03:52:56PM

10 progress with this these documents, Judge.

11 THE COURT: All right.

12 MR. CASH: As far as settlement, Judge, we  
13 haven't discussed any type of a settlement of the lawsuit,  
14 but are working towards each other on the exchange of  
15 information. I agree with that.

03:53:09PM

16 MR. YETTER: I think the issue has been raised  
17 with Saxon.

18 THE COURT: Saxon?

19 MR. PATTERSON: Well, with respect to the

03:53:17PM

20 Harrises' individual mortgage statement. They are  
21 delinquent with Saxon. And Mr. Spears is here who  
22 represents Saxon. And we have talked about trying to get  
23 the Harrises back on track with their ongoing mortgage  
24 case. This doesn't have really anything to do with the

03:53:31PM

25 bankruptcy case.

1 THE COURT: Yes, it does.

2 MR. PATTERSON: Well, with respect --

3 THE COURT: The mortgage is the largest debt,  
4 isn't it?

03:53:39PM

5 MR. PATTERSON: With respect to --

6 THE COURT: I'm sorry. That was a question  
7 Mr. Patterson, the Harrises largest debt is?

8 MR. PATTERSON: I would suspect that's true. I  
9 don't know that off top of my head, but I would highly

03:53:52PM

10 suspect --

11 THE COURT: I would too. So the mortgage being  
12 in arrears is a significant part of the bankruptcy case.

13 MR. PATTERSON: I guess we're parsing words.

03:54:07PM

14 It is not part of their Chapter 13 plan. The only thing in  
15 their Chapter 13 plan is the payments will be made directly  
16 by the Harrises on their ongoing mortgage, so it's not  
17 flowing through their Chapter 13 plan or --

18 THE COURT: So why do they need a Chapter 13  
19 plan?

03:54:25PM

20 MR. PATTERSON: Because there was arrearage on  
21 their house when they filed for bankruptcy. An arrearage  
22 portion is being paid through their Chapter 13 plan. They  
23 are very close to completing and receiving their discharge  
24 in their Chapter 13 case within months, but I didn't check

03:54:41PM

25 before today.

1 THE COURT: How much are the Harrises out  
2 because of this problem?

3 MR. PATTERSON: I'm sorry. I don't understand.

03:54:49PM

4 THE COURT: Well, this quest is about the  
5 Harrises being cheated out of an attorney's fee.

6 MR. PATTERSON: Less than a thousand dollars  
7 with respect -- with respect to Fidelity and the  
8 undisclosed. I believe that's right.

03:55:10PM

9 My comments were Mr. Spears and I have  
10 been talking about getting them back on track with their  
11 ongoing mortgage so that when they receive their discharge  
12 in their Chapter 13 plan, they can be not trying to come  
13 back or have another problem to deal with once they're  
14 complete with their discharge.

03:55:26PM

15 MR. CASH: Your Honor, just for point  
16 clarification, what we were sued for is the difference  
17 between what they say was a reasonable attorney's fee.

18 THE COURT: I understand. It's a seven-dollar  
19 case.

03:55:35PM

20 MR. CASH: No, it's a \$175 case. That's the  
21 difference.

22 THE COURT: I've added service charges and late  
23 fees to it. So why don't you give them \$175?

03:55:53PM

24 MR. CASH: I would give them \$175 out of my  
25 wallet right now if it would resolve the case. I will pay

1 it.

2 THE COURT: That's the controversy.

3 MR. CASH: With no admission of liability.

4 THE COURT: I understand.

03:56:04PM

5 MR. YETTER: Your Honor, we're going to do the  
6 right thing for the Harrises, so I appreciate what counsel  
7 just offered, and this may lead to some discussions about  
8 this case, Your Honor.

9 THE COURT: I bet he'd round it up to 250.

03:56:16PM

10 MR. YETTER: 350? Your Honor, maybe you can  
11 negotiate.

12 MR. CASH: I'm not sure about that.

13 THE COURT: Mr. Yetter takes Visa, Master card  
14 American Express and Discover.

03:56:30PM

15 MR. YETTER: Cashier's checks as well, Your  
16 Honor. I am serious. We will certainly will take it under  
17 consideration.

18 THE COURT: I understand the global complaint,

19 but I'm not in the public policy business. I'm in the

03:56:43PM

20 discrete resolution of the resolution of discrete disputes  
21 between individuals. And if the Harrises have no claim  
22 outside of that modest amount of money, and they want to be  
23 free --

24 MR. YETTER: We understand that, Your Honor.

03:57:02PM

25 THE COURT: -- and they've got -- they're



03:57:25PM

1 working with the actual lender whom they owe, that ought to  
2 do it. I'm perfectly willing to decide the case, but there  
3 seems to be modest futility to doing that, unless we want  
4 to make it global. And to be global, we have to have some  
5 individual with a viable factual complaint.

03:57:40PM

6 MR. YETTER: We do, Your Honor. And that  
7 individual has to be represented. It has to meet -- we  
8 understand that, and that is why we are -- this is  
9 something that we would certainly give reasonable  
10 consideration to counsel with our clients about.

11 THE COURT: This may be a cruel imposition.  
12 Will you at least talk to Mr. Yetter next week?

13 MR. CASH: Absolutely, Your Honor. We have  
14 already arranged. We have -- no, not next week.

03:57:56PM

15 THE COURT: Whenever, the 30th.

16 MR. CASH: I've got to take the Louisiana bar  
17 next week.

18 THE COURT: I have a wonderful staff who tell  
19 me what day it is and usually what day I can do things.

03:58:13PM

20 MR. SPEARS: Your Honor, if I may? I  
21 apologize. For the record my name is Berry Spears and I  
22 represent Saxon Mortgage. And I apologize we're not a  
23 party and I didn't --

24 THE COURT: We have a lot of nonparties.

03:58:28PM

25 MR. SPEARS: But I did want to the Court to be

1 aware, Mr. Patterson hasn't made inquiry as it relates to  
2 whether there could be something worked out. I think we're  
3 a long way, frankly.

4 THE COURT: How much is the arrearage?

03:58:42PM 5 MR. SPEARS: The arrearage is about \$20,000.

6 THE COURT: How long have the Harrises not paid  
7 their mortgage?

8 MR. SPEARS: No payments have been made since  
9 January of 2007.

03:58:53PM 10 THE COURT: How long did they make payments  
11 before then?

12 MR. SPEARS: Well, the note was originated in  
13 2001. Between 2001 and January of 2007, there were  
14 probably a dozen defaults during that period of time. I  
03:59:11PM 15 don't have that, you know, at my fingers tips, but I'm  
16 certain the records would reflect.

17 THE COURT: If you would furnish it to  
18 counsel --

19 MR. SPEARS: I've done so, Your Honor.

03:59:21PM 20 THE COURT: -- so that they know how many times  
21 they missed.

22 MR. SPEARS: They do indeed. And I have the  
23 pay record. I can count them up. I think it's 12 or 13  
24 times, I believe, during that period of time.

03:59:36PM 25 THE COURT: And are you willing to talk to

1 Mr. Yetter?

2 MR. SPEARS: Your Honor, we're willing to  
3 consider any proposal that they'd be -- that they'd make,  
4 and we've always been willing to consider that. You know,  
03:59:55PM 5 as I told Mr. Patterson, the stumbling block here is that  
6 the default is longstanding and, frankly, has been  
7 consistent. But we're willing to consider any proposal.

8 THE COURT: So they've made about four years or  
9 so of payments?

04:00:14PM 10 MR. SPEARS: That's probably about right.

11 THE COURT: Out of eight.

12 MR. SPEARS: That's right.

13 THE COURT: In round numbers.

14 MR. SPEARS: Yes, sir. By the way Mr. Epstein  
04:00:25PM 15 tells me that the pay history, he's attached as his Exhibit  
16 Number 26 in the binder, which I believe the Court has.

17 MR. EPSTEIN: It's 29. There's an agreed set  
18 of exhibits that the Court asked us to settle up on. We  
19 did get some new documents yesterday from Saxon, and we've  
04:00:49PM 20 agreed with Mr. Bissinger to allow them a few days to take  
21 a look at them, to go through the Saxon documents.

22 THE COURT: Did you send a binder, or did you  
23 just file them?

24 MR. EPSTEIN: We filed the list, Your Honor.  
04:01:02PM 25 We didn't want to clutter the Court's file with all the

1 documents.

2 THE COURT: Did -- but at some point you may  
3 wish me actually to read them. And what I would suggest,  
4 since you've agreed to them, you both have copies, that we  
04:01:17PM 5 not file them even then, and then I'll have my copy, and if  
6 anything becomes critical, we can file that document. I  
7 have signed the confidentiality order, there are copies for  
8 the principal counsel. They'll be online late this  
9 afternoon or the morning. So if you want to see what it  
04:02:03PM 10 says, I'm sorry I didn't make copies for everybody. And if  
11 there's some defect in that, Mr. Cash, let me know and I'll  
12 deny it.

13 MR. CASH: Thank you, Your Honor.

14 THE COURT: I think -- Mr. Yetter, is there  
04:02:32PM 15 anything else you want to do today? I think if you're  
16 going to talk, I would prefer not to do anything on the  
17 risk of limiting the potential success of the talks, but if  
18 you-all don't work it out by the 5th of August, then I  
19 think it's time to crank up and maybe have some dispositive  
04:02:52PM 20 motions.

21 MR. YETTER: I think that we are at a stage now  
22 where we will learn more by the 5th of August, Your Honor,  
23 and we can report back to the Court, and then the Court  
24 will do what you think is appropriate in terms of --

04:03:03PM 25 THE COURT: On the 5th, if you will just

1 jointly tell me what you think ought to be done, and if  
2 there's a strong divergence, then list each of your  
3 proposals. But I don't want you to brief the case. I just  
4 want to know Harris thinks we ought to do X, and Fidelity  
04:03:24PM 5 thinks we ought to do Y. And if I -- do I understand  
6 correctly that Saxon is the actual lender?

7 MR. YETTER: Saxon.

8 MR. PATTERSON: I believe Saxon servicer only  
9 -- Mr. Spears I think discloses the owners -- well, I'll  
04:03:49PM 10 let him address the Court.

11 THE COURT: All right. In the chart, there is  
12 a lender somewhere, and Saxon is working for the lender as  
13 a service.

14 MR. SPEARS: That's correct, Your Honor. Saxon  
04:04:05PM 15 Mortgage is the servicer for a securitized trust.

16 THE COURT: I'm going to call them the bank,  
17 the actual lender.

18 MR. SPEARS: Yes, Your Honor.

19 THE COURT: Okay. And so, the chart is right,  
04:04:22PM 20 I didn't put their names on it. I didn't put the names on  
21 it to be clear. Anything else we can usefully do?

22 MR. YETTER: That's all for the plaintiffs,  
23 Your Honor.

24 MR. CASH: Not for the defense. Thank you.

04:04:39PM 25 THE COURT: Do you want to quickly read that

1 order in case you really have something that's unworkable?

2 MR. CASH: If I may respond, Your Honor? I  
3 think it looks fine, Your Honor. I think I've read this  
4 order before, so it looks familiar.

04:05:20PM

5 THE COURT: I like to think I'm dependable, I  
6 may have sunk to predictable, and my wife says I'm not only  
7 dull but I bring dullness out in other people. All right,  
8 Mr. Yetter, is the order all right?

04:05:37PM

9 MR. YETTER: I have had many orders from the  
10 Court. I'm sure it's fine, Judge.

11 THE COURT: And if something comes up that  
12 doesn't fit, holler and we'll adjust it. Okay?

13 MR. CASH: Yes, sir.

04:05:46PM

14 THE COURT: Thank you, counsel. Sorry to keep  
15 you waiting.

16 (A recess was had 4:05 p.m.)

**COURT REPORTER'S CERTIFICATE**

17 I, Johnny C. Sanchez, certify that the foregoing is a  
18 correct transcript from the record of proceedings in the  
above-entitled matter.

19 /S/ JOHNNY C. SANCHEZ, RMR, CRR

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